



PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In the **PATENT APPLICATION** of:

Schwartz et al.

Application No.: 09/706,508

Confirmation No.: 6522

Filed: November 3, 2000

For: LOBEMAN

Group: 2682

Examiner: Tuan A. Tran

Our File: JUR-PT001

Date: March 21, 2005

Mail Stop Appeal Brief -Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

**REPLY BRIEF TO THE BOARD OF PATENT APPEALS
AND INTERFERENCES PURSUANT TO C.F.R. § 41.41**

Sir:

Further to the February 24, 2005 Examiner's Answer, the Applicant hereby submits this Reply Brief. We received a copy of the Examiner's Answer in response to our November 8, 2004 Appeal Brief.

With respect to Item (7) of the Examiner's Answer, under the Rules of Practice Before the Patent Appeals and Interferences (BPAI), 69Fcd Reg. 49959 (August 12, 2004) (Final Rule), effective September 13, 2004, statements with respect to the "grouping of claims" has been replaced by "Grounds of Rejection to be Reviewed on Appeal". Since Applicant has provided the "Grounds of Rejection to be Reviewed on Appeal", Appellant believes that it has fulfilled the requirements under the new regulations.

With respect to Item (11) Grounds of Rejection, Appellant provides further arguments as follows. In response to Examiner's arguments, the Examiner's Answers states "therefore it would have been obvious to one of ordinary skill in the art at the time of the invention was made to configure the speaker module as disclosed by Hahn with the size that can be fitted in the concha portion of the ear for the advantage of allowing greater customization in the fitting of the headset module to the user's ear". Appellant strongly disagrees based on the following. The Hahn apparatus as described at column 5, line 16 – 23 states "...the user would deform the ear hook portion 12 towards the speaker module 14 in order to clamp the pinna of the user's ear between the ear hook 12 and the speaker module 14 and thereby fasten the wireless headset module 10 to the user's ear" (emphasis added). The Hahn apparatus clamps the pinna of the user's ear between ear hook and the speaker module. Accordingly, one skilled in the art would not replace the speaker module in Hahn, since the functioning of this speaker module and ear hook arrangement is essential for the invention to function in its intended purpose.

The Examiner's response to the Appellant's arguments also stated "because the housing of the Hahn apparatus is configured to be substantially supported by a pinna of the listener's ear...." with reference to Hahn, Figure 3. Appellant strongly disagrees. As shown in Hahn Figure 3, the ear hook portion and the speaker module clamp the listener's ear. Appellant respectfully disagrees that clamping is the same as supporting. Support implies "to carry or bear the weight of" and clamping refers to "grip, fasten or brace with". Accordingly, Appellant respectfully submits that the "clamping" of Hahn is totally different than the "supporting" of the present claims.

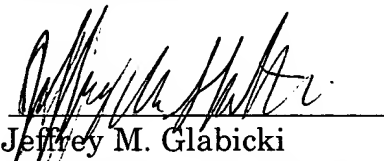
Applicant: Schwartz et al.
Application No.: 09/706,508

CONCLUSION

For the reasons stated above and in the Appeal Brief, pending claims 38 - 49 meet the requirements of 35 U.S.C. §103(a). Accordingly, the final rejection of the claims should be reversed.

Respectfully submitted,

Schwartz et al.

By: 
Jeffrey M. Glabicki
Registration No. 42,584
(215) 568-6400

Volpe and Koenig, P.C.
United Plaza, Suite 1600
30 South 17th Street
Philadelphia, PA 19103

JMG/pf